

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANCISCO JAVIER AVILA-
NUNEZ,

Defendant.

8:13-CR-43

ORDER

This matter is before the Court on the defendant's motion for appointment of counsel (filing [752](#)). That motion will be denied.

The defendant is seeking the appointment of counsel to assist him in obtaining a sentence reduction pursuant to [18 U.S.C. § 3582\(c\)\(2\)](#) and U.S.S.G. Amend. 782. But there is no constitutional right to appointed counsel in sentence modification proceedings under [§ 3582\(c\)](#). *United States v. Harris*, [568 F.3d 666, 669 \(8th Cir. 2009\)](#). Nor does the defendant have a right to appointed counsel under the Criminal Justice Act, [18 U.S.C. § 3006A](#). *Harris*, [568 F.3d at 669](#). Whether to appoint counsel is, therefore, committed to the discretion of the Court. *See id.* And the Court declines to appoint counsel in this case because it is apparent that the motion the defendant wants to file would be without merit.

U.S.S.G. § Amend. 782 was effective November 1, 2014. The defendant was sentenced on June 18, 2015. Filing [677](#). And the Court uses the Guidelines Manual in effect on the date the defendant is sentenced. [U.S.S.G. § 1B1.11\(a\)](#). Accordingly, the defendant was sentenced pursuant to the *amended* Guidelines—Amendment 782's two-level reduction had already taken effect and was applied to him at sentencing. Filing [691](#) at 9, 14; filing [677](#); filing [678](#) at 1. In addition, the defendant's offense was and is subject to a mandatory minimum sentence, and the defendant was sentenced to the mandatory minimum. He is entitled to no further reduction. *See, United States v. McGuire*, [524 F.3d 891, 892 \(8th Cir. 2008\)](#); *United States v. Peters*, [524 F.3d 905, 907 \(8th Cir. 2008\)](#).

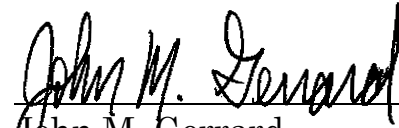
Accordingly, any motion for a sentence reduction based on Amendment 782 would be without merit, and there is no basis for appointing counsel.

IT IS ORDERED:

1. The defendant's motion for appointment of counsel (filing [752](#)) is denied.
2. The Clerk of the Court shall send a copy of this order to the defendant at his last known address.

Dated this 26th day of October, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge